



TOWN OF WEST TISBURY PERSONNEL BOARD

EQUAL EMPLOYMENT OPPORTUNITY ANTI-DISCRIMINATION AND HARASSMENT POLICY

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EQUAL EMPLOYMENT OPPORTUNITY ANTI-DISCRIMINATION AND HARASSMENT POLICY

THE TOWN OF WEST TISBURY

I. Introduction

It is the policy of the Town of West Tisbury (the “Town”) to promote a healthy, professional, and productive workplace in which all employees are treated with dignity and respect and to provide procedures for reporting, investigating, and resolving complaints of unprofessional conduct, harassment, and unlawful discrimination. All employees have the right to work in an environment free of harassment and unlawful discrimination.

Employees are expected to act in a positive manner and contribute to a productive work environment that is free from harassing or disruptive activity from fellow employees, members of the public and/or vendors conducting business with the Town. Discrimination (including harassment), whether based upon race, color, gender, gender identity, national origin, religion, ancestry age sexual orientation, disability, pregnancy, pregnancy-related conditions, genetic information, active military status or other basis prohibited under state or federal anti-discrimination statutes, occurring in the workplace or in other settings in which employees may find themselves in connection with their employment is unlawful and will not be tolerated. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated.

The Town is committed to assuring that all employees are aware they may not engage in any acts that threaten, intimidate, harass, demean, or torment fellow employees, irrespective of whether the employee is a member of a protected class. The Town considers unprofessional conduct, harassment, and unlawful discrimination of others to be serious employee misconduct.

To achieve our goal of providing a workplace free from discrimination, the Town will implement the procedures described below to address how any potentially inappropriate conduct will be dealt with. The Town will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

II. Coverage

This Policy applies to all employment practice and employment programs sponsored by the Town. This Policy shall apply, but not be limited, to the areas of

- Recruitment
- Selection
- Compensation and benefits
- Professional development and training

- Reasonable accommodation for disabilities or religious practice
- Promotion
- Transfer
- Termination
- Layoff and
- Other terms and conditions of employment.

This policy may apply to discrimination (including harassment) that occurs between co-workers that takes place outside the workplace (including but not limited to, online conduct or conduct utilizing the internet or other electronic media).

When the conduct complained of occurs outside of the workplace the Town may consider the following and other factors in assessing whether the conduct constitutes conduct in violation of this Policy:

- whether the event at which the conduct occurred is linked to the workplace in any way, such as at a Town-sponsored function;
- whether the conduct occurred during work hours;
- the severity of the alleged outside-of-work conduct;
- the work relationship of the complainant and the alleged harasser, which includes whether the alleged harasser is a supervisor and whether the alleged harasser and complainant come into contact with the one another on the job;
- whether the conduct adversely affected the terms and conditions of the complainant's employment or impacted the complainants' work environment.

Because the Town takes allegations of unlawful discrimination and harassment seriously, officials will respond promptly to complaints and, where it is determined that such inappropriate conduct has occurred, will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this Policy sets forth the Town's goals of promoting a workplace that is free of discrimination and harassment, the Policy is not designed or intended to limit the Town's authority to discipline or take remedial action for workplace conduct which is deemed unacceptable, regardless of whether that conduct satisfies the legal definitions of discrimination or harassment.

III. Examples of Prohibited Discriminatory Behavior

It is not possible to list all the circumstances that may constitute discrimination in violation of this Policy. Discrimination may take many forms, including both verbal and nonverbal behaviors. Prohibited behavior includes, but is not limited to, the following behaviors connected to someone's membership in one or more groups protected by law as noted in the

paragraph above: slurs or other derogatory comments; sharing demeaning pictures, cartoons or jokes; demeaning gestures, and any conduct constituting sexual harassment.

IV. Definitions

Harassment: Any form of conduct that is objectively unreasonable or offensive, creates a hostile or intimidating working environment and is based on an employee's protected class status including race, sex, which in some states may include sexual orientation, gender identity and marital status, national origin, color, religion, age or disability.

Discrimination: Employment decisions which, without operational justification, are based on an employee's protected class status.

Sexual Harassment: In Massachusetts, the legal definition for sexual harassment is this:

"Sexual harassment" means sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:

- (a) Submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or
- (b) Such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating, or sexually offensive work environment.

"Hostile Work Environment" is a form of sexual harassment, where pervasive and sexually hostile working conditions unreasonably, interfere with an employee's ability to do his or her job.

"Quid Pro Quo" is another form of sexual harassment, where tangible job benefits are offered or withheld in exchange for sexual favors.

Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.

The legal definition of sexual harassment is broad and, in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a workplace environment that is hostile, offensive, intimidating, or humiliating to male or female workers may also constitute sexual harassment.

While it is not possible to list all those circumstances that may constitute sexual harassment, the following are some examples of conduct, which is unwelcome, may constitute sexual harassment, depending upon the totality of the circumstances, including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances, whether they involve touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comments on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, and cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into one's sexual experiences; and
- Discussion of one's sexual activities.

V. Prohibited Activities

1. Unprofessional Conduct
 1. No employee shall treat another employee with disrespect or discourtesy. At all times employees will be civil and professional in their dealings with one another.
 2. No employee shall either explicitly or implicitly ridicule, mock, deride or belittle any fellow employee.
2. Discriminatory Treatment

No employee shall, without appropriate justification, treat any employee differently based on a protected class status.
3. Unlawful Harassment

No employee shall:

 1. make offensive or derogatory comments to any person based on their protected class status, either directly or indirectly, whether verbally or through the use of electronic devices or Internet services.
 2. Engage in activity such as slander, sabotage, ostracism, badgering, withholding resources, disruptive treatment, and/or conduct that intimidates or is hostile, whether this conduct is of a sexual nature or based on another protected class status. Nor shall any employee allow non-employees who conduct business with the Town agency to engage in such activity. All prohibited acts of these types will be judged on the basis of conduct that is "objectively reasonable."
 3. Perform an objectively unreasonable act upon any employee based upon that person's race, sex, religion, national origin, color, sexual orientation, pregnancy, age, or disability.

4. Use blogs, social networking sites, or other Internet communication devices to harass another employee. This prohibition includes the employee's use of Internet sites outside the workplace.

4. Supervisors' Responsibilities

a. Although all employees shall be responsible for preventing unprofessional conduct, harassment, and/or discrimination, in addition, supervisors shall be responsible for:

1. advising employees on the types of behavior prohibited and the procedures for reporting and resolving complaints of unprofessional conduct, harassment and discrimination;
2. monitoring the work environment on a daily basis for signs that unprofessional conduct, harassment or discrimination may be occurring;
3. stopping any observed acts that may be considered unprofessional conduct, harassment or discrimination, and taking appropriate steps to intervene, whether or not the involved employees are under his/her supervision;
4. utilizing all reasonable means to prevent a prohibited act from occurring when he or she knows or should know that an employee will or may perform such an activity; and
5. Taking immediate action to prevent retaliation towards the complaining party and to eliminate the hostile work environment where there has been a complaint of harassment and/or discrimination.

(1) If a situation requires separation of the parties, care should be taken to avoid action that punishes or appears to punish the complainant.

(2) Transfer or reassignment of any of the parties involved should be voluntary if possible and, if non-voluntary, should not be taken against the wishes of the complaining party.

2. No supervisor shall make any employment decision that affects the terms, conditions, or privileges of an individual's employment based on the basis of that person's race, sex, sexual orientation, gender identity, religion, national origin, color, sexual orientation, pregnancy, age or disability.

3. Supervisors shall take action to notify the appropriate authority, of situations that are brought to their attention, whether or not the individual is an immediate subordinate. Circumstances in which the victim is under age require immediate, emergency notification.

4. Any proscribed conduct covered by this policy that comes to the attention of a supervisor shall result in an investigation.

5. Each supervisor has the responsibility to assist any employee in documenting and filing a

complaint of unprofessional conduct, harassment, or discrimination with the Personnel Board.

E. Employee Responsibilities

1. Each employee of this agency is responsible for assisting in the prevention of unprofessional conduct, harassment, and discrimination by:

- a. refraining from participation in or encouragement of action that could be perceived as unprofessional conduct, harassment or discrimination;
- b. reporting observed acts of unprofessional conduct, harassment or discrimination to a supervisor; and
- c. encouraging any employee who confides that he or she is being treated unprofessionally, harassed, or discriminated against to report these acts to a supervisor.

2. Failure of any employee to carry out their responsibilities as defined in this policy will be considered in any performance evaluation or promotional decision and may be grounds for discipline.

VI. Complaints of Discrimination or Sexual Harassment

1. Any employee encountering unprofessional conduct, harassment, and/or discrimination is encouraged to:

- a. inform the person that his or her actions are unwelcome and offensive; and
- b. immediately document all incidents in order to provide the fullest basis for investigation.

2. Any employee who believes that he or she is being treated unprofessionally, harassed, or discriminated against shall report the incident(s) as soon as possible so that steps may be taken to protect the employee from further actions in violation of this policy and so that appropriate investigative and disciplinary measures may be initiated.

3. Where the immediate supervisor is involved in the prohibited action, the employee may waive filing a complaint with that supervisor and may proceed to a supervisor or the Personnel Board.

4. The supervisor or other person to whom a complaint is given shall meet with the employee and document:

- a. the incident(s) complained of;
- b. the person(s) performing or participating in the prohibited action;

- c. any witnesses to the incident(s); and
- d. the date(s) on which it occurred.

5. That employee taking the complaint shall promptly submit a confidential memorandum documenting the complaint to their department head or the Personnel Board. Unless the Personnel Board designates the department head or another party to do so, the Personnel Board shall be responsible for investigating any complaint alleging a violation of this policy and shall:

- a. immediately notify the Town Administrator and Chair of the Board of Selectmen if the complaint contains evidence of criminal activity;
- b. include a determination as to whether a violation of this policy occurred and whether other agency members participated in or encouraged the harassment or discrimination;
- c. inform the parties involved of the outcome of the investigation;
- d. maintain a file of complaints in a secure location, and
- e. provide the chief executive officer with an annual summary of these complaints.

7. The complaining party's confidentiality shall be maintained throughout the investigatory process to the extent practical and appropriate under the circumstances and controlling law.

8. This policy does not preclude any employee from filing a complaint or grievance with an appropriate outside agency.

If any employee believes that he or she has been subjected to discrimination or sexual harassment, the employee has the right to file a complaint with the Town, by contacting the Board Administrator to the Personnel Board, or any member of the Personnel Board. This may be done in writing or orally:

Board Administrator c/o Personnel Board, Town Hall, P. O. Box 278, West Tisbury, MA 02575:
Board Administrator (508-696-6404);
Norman Perry (508-696-8416);
Ben Retmier (774-454-2608)
Rachel Rooney, Employee Rep (774-563-0509 or 508-693-3366);
Leon Brathwaite (508-693-5810) or
Dianne Powers (508-693-1402).

Any of these people is also available to discuss any concerns an employee may have and to provide information about this policy on discrimination or sexual harassment and available complaint process.

VII. Discrimination or Sexual Harassment Investigation

When the complaint is received by the Board Administrator, it will be promptly investigated in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. The investigation will include a private interview with the person filing the complaint and with witnesses. The person alleged to have engaged in prohibited discrimination or committed sexual harassment will also be interviewed. When the investigation is complete, the person filing the complaint and the person alleged to have committed the conduct will be informed, to the extent appropriate, of the results of that investigation.

VIII. Confidentiality

Given the sensitive nature of complaints of discrimination and/or harassment, all parties and witnesses in a complaint, as well as department heads, supervisors, or other town employees or board members who are aware of a complaint or investigation thereof, are strongly encouraged to maintain this information as confidential, so as not to negatively impact an investigation. The investigation will be conducted in such a way as to maintain confidentiality to the extent practical under the circumstances.

All employees are reminded of the provisions of the conflict of Interest Law, particularly G. L. c. 268A, section 23(c)(2), which prohibit a municipal employee or official from improperly disclosing information that is protected from disclosure under the Public Records Law, and acquired by any employee or official in the course of official duties. General Laws c. 268A, section 23 also prohibits a municipal employee or official from using such information to further the employee's official's personal interest. Violation of this statute may lead to disciplinary action, up to and including termination.

IX. Retaliation

Any retaliation against an individual who has formally or informally complained about discrimination or harassment, or has cooperated with an investigation of a discrimination complaint, is prohibited. Any evidence of retaliation shall be considered a separate violation of this policy and shall be handled by the same complaint procedures established for unprofessional conduct, harassment, and discrimination complaints.

Retaliation can be overt or subtle. Retaliation may include, but is not limited to: treating a complainant or witness differently, more harshly, or in a hostile manner; physical interference with movement such as blocking a path; derogatory comments or action which would tend to have a chilling effect on other complainants; sudden investigations of the complainant's private life, or; sudden strict enforcement of work rules. Retaliation in any form will not be tolerated.

Note: All employees should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of a discrimination or sexual harassment complaint is unlawful and will not be tolerated by the Town.

X. Disciplinary Action

If it is determined that discrimination, harassment, retaliation or other inappropriate conduct has occurred, the Town will act promptly to eliminate the offending conduct and, where appropriate, will also impose disciplinary action. Such action may range from counseling, informal, or formal reprimands, written or verbal warnings, and suspension up to including termination from employment.

XI. State and Federal Remedies

In addition to the above, if an employee believes that the employee has been subjected to unlawful discrimination or sexual harassment, the employee may file a formal complaint with either or both of the government agencies set forth below. Using the Town's complaint process does not prohibit the employee from filing a complaint with these agencies. Each of the agencies has a short time period for filing a claim (300 days).

1. The United States Equal Employment Opportunity Commission ("EEOC")
John F. Kennedy Federal Building
475 Government Center
Boston, MA 02203
Phone (800) 669-4000
TTY: (800) 669-6820

2. The Massachusetts Commission against Discrimination ("MCAD")
One Ashburton Place Rm 601
Boston, MA 02108
(617) 994-6000
TTY (617)994-6196

OR

3. New Bedford Office- MCAD
Demello International Center
128 Union Street, Suite 206
New Bedford, MA 02740
(774) 510-5801

XII Reasonable Accommodation

The town will not discriminate against people with disabilities in any employment practices or in terms, conditions, or privileges of employment, including but not limited to: application,

testing, hiring, assignment, evaluation, disciplinary action, training promotion medical examination, layoff/recall, termination, compensation, leaves, or benefits. The Town will make an effort to provide a reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability, unless such action would cause an undue hardship to the operations of the Town.

In addition, it is the Town's policy to comply with the provision of G.L. c 151B, sec 1E, requiring certain reasonable accommodations for an employee's pregnancy or pregnancy-related condition.

Employees seeking reasonable accommodations may submit their request in writing to their department head with a copy to the Personnel Board at the above address.

XIII. Training

The Town shall provide periodic and refresher training concerning the nature of unprofessional conduct, harassment, and discrimination in the workplace and prohibitions on such actions defined in the policy. Training will be tailored to specific departments, recognizing that middle- and first-line supervisors are of particular importance in preventing, identifying, and responding effectively to unprofessional conduct, harassment, and discrimination.

XIV. Equal Employment Opportunity Statement

The Town will not discriminate in its employment practices on the basis of race, color, gender, gender identity, national origin, religious creed, ancestry, age, sexual orientation, disability, pregnancy or pregnancy-related condition, genetic information, active military status, or any basis prohibited under state or federal anti-discrimination statutes. This shall include such areas as recruitment, selection, compensation and benefits, professional development and training, reasonable accommodation for disabilities or religious practices, promotion, transfer termination, layoff and other terms and conditions of employment.

FINAL

Approved May 13, 2019

ACKNOWLEDGMENT OF RECEIPT OF POLICY

(Please complete and return to the Personnel Board)

I acknowledge receipt of a copy of the Equal Employment Opportunity Anti-Discrimination and Harassment Policy of the Town of West Tisbury adopted by the Personnel Board on May 13, 2019, and I have read its content.

Employee Name (print)

Employee Signature

Department

Date